Supreme Court, U.S.
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No. ____

IN THE

Supreme Court of the United States

October Term, 1994

CHARLES A. SCHULTZ,

Petitioner

v.

UNITED STATES OF AMERICA, FEDERAL AVIATION ADMINISTRATION,

Respondent

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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30 pp

I

ISSUES FOR REVIEW ON APPEAL

1. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT THE DISTRICT COURT DID NOT HAVE JURISDICTION TO HEAR MR. SCHULTZ'S ATTACK ON THE VOID JUDGMENT ENTERED BY THE FEDERAL AVIATION ADMINISTRATION (HEREINAFTER, "THE FAA")?

2. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT SUMMARY JUDGMENT COULD BE GRANTED WHEN THE STATUTE UNDER WHICH MR. SCHULTZ WAS PROSECUTED AND UNDER WHICH FAA SEEKS TO RECOVER, HAS EXPIRED OF ITS OWN TERMS AND CONDITIONS?

3. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT SUMMARY JUDGMENT COULD BE GRANTED, WHEN FEDERAL AVIATION RULES UNDER WHICH MR. SCHULTZ WAS PROSECUTED WERE UNCONSTITUTIONALLY ENACTED AND INVALIDLY PROMULGATED?

4. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT MR. SCHULTZ'S DUE PROCESS RIGHTS WERE NOT VIOLATED BY HIS PROSECUTION UNDER UNCONSTITUTIONALLY ENACTED AND INVALIDLY PROMULGATED FAA RULES?

5. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT 49 U.S.C.A. § 1486(a) APPLIES TO PERSONS OTHER THAN THE SECRETARY OF TRANSPORTATION?

6. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT THE JUDGMENT ENTERED AGAINST MR. SCHULTZ DID NOT EXPIRE AT THE TIME THE STATUTE UNDER WHICH HE WAS PROSECUTED EXPIRED OF ITS OWN TERMS AND CONDITIONS?

7. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN CONCLUDING THAT THE FAA'S MOTION FOR SUMMARY JUDGMENT WAS FILED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS?

8. DID THE COURT OF APPEALS ERR, AS A MATTER OF LAW, IN EXTENDING THE HOLDING OF U.S. V. MCBRIDE, 788 F.2D 1429, (10TH CIR, 1986) TO INCLUDE VOID JUDGMENTS AND EXPIRED STATUTES WITHIN ITS HOLDING?

II

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CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

28 U.S.C. § 1291

28 U.S.C. § 1354

28 U.S.C. § 1355

49 U.S.C.A. § 1471(d)

49 U.S.C.A. § 1473

49 U.S.C.A. § 1475

49 U.S.C.A. § 1486

14 CFR § 13.208

14 CFR § 107.21(a)

Public Law No. 100-233, § 204, 101 Stat. 1519

Public Law No. 101-236, 103 Stat. 2060

Public Law No. 101-281, 104 Stat. 164

Public Law No. 101-370, 104 Stat. 451

Public Law No. 102-345, § 2(b), 106 Stat. 925

IV

PARTIES TO THE APPEAL

The parties to this appeal are Charles A. Schultz, the Petitioner/Appellant/ Defendant and the United States of America, Federal Aviation Administration (hereinafter, "the FAA").

V

DISPOSITION IN LOWER COURTS

The FAA filed a complaint against Charles A. Schultz on November 16, 1992. Mr. Schultz was served with a summons and complaint January 26, 1993. Mr. Schultz filed an answer on February 16, 1993. The FAA filed a Motion for Summary Judgment on July 30, 1993. Mr. Schultz filed a Memorandum in Opposition to the FAA's Motion for Summary Judgment and a Motion for Summary Judgment on September 2, 1993. Both parties motions were argued January 3, 1994. At the

close of the hearing the Honorable Judge Bruce Jenkins granted summary judgment in favor of the FAA and against Mr. Schultz, declaring that Mr. Schultz had a very good argument, but that the court did not have the authority to grant Mr. Schultz's request. The judgment was entered on January 6, 1994. Mr. Schultz appealed the Judgment on February 4, 1994. On February 28, 1995, the Court of Appeals for the Tenth Circuit issued an opinion affirming the decision of the District Court.

VI
JURISDICTION

The United States Supreme Court has jurisdiction of this Petition pursuant to the provisions of 28 U.S.C. § 1254(1).

A. DATE OF ENTRY OF JUDGMENT:

The Judgment of the Court of Appeals was entered on February 28, 1995.

B. STATUTORY JURISDICTION OF THE

SUPREME COURT:

Pursuant to the provisions of 28 U.S.C. § 1254(1) the Supreme Court has jurisdiction to here this Petition for review of the decision of the Court of Appeals for the Tenth Circuit.

VII

BASIS OF FEDERAL JURISDICTION

The FAA asserted that the trial court had jurisdiction of this matter pursuant to the provisions of 903 and 905 of Title 49 U.S.C.A. App. 1473 and 1475 as well as 28 U.S.C.A. § 1354 and § 1355. Jurisdiction was vested in the Court of Appeals pursuant to the provisions 28 U.S.C.A. § 1291.

VIII

STATEMENT OF THE CASE

This is an appeal from a Judgment of the Court of Appeals affirming a grant of Summary

Judgment by the District Court in favor of the FAA and against Mr. Schultz based on a judgment and order issued and entered against Mr. Schultz by the FAA's administrative law judge (hereinafter, "ALJ") in an administrative proceeding conducted, litigated, and decided by the FAA.

In December 1987, Congress enacted a series of amendments to the Federal Administration Act with respect to civil penalties. See Public Law No. 100-233, § 204, 101 Stat. 1519 (codified in scattered sections of 49 U.S.C.A.). One of the purposes of the amendments was to establish a "demonstration program" to prosecute and adjudicate administrative penalty actions less than $50,000. See 49 U.S.C.A. § 1475 (Supp. V 1987).

Under the express terms of the amendments, the FAA was granted authority to assess administrative penalties for a two (2) year period beginning on December 30, 1987.

See 49 U.S.C.A. § 1475(d)(4).

On December 15, 1989, the Congress enacted Public Law 101-236, 103 Stat. 2060, changing the duration of the "demonstration program" of § 1475(d)(4) from two (2) years to 28 months.

On May 4, 1990, Congress passed Public Law 101-281, 104 Stat. 164, changing the duration of the "demonstration program" of § 1475(d)(4) from 28 months to 31 months. On August 15, 1991, the Congress enacted Public Law 101-370, 104 Stat. 451, changing the duration of the "demonstration program" of § 1475(d)(4) from 31 months to "the period beginning on the date of enactment of this section and ending on August 1, 1992".

49 U.S.C.A. § 1475 expired of its own terms at midnight on July 31, 1990. From midnight July 31, 1990, to August 15, 1990, there was no § 1475(d)(4) of 49 U.S.C.A. in effect.

Mr. Schultz was accused by the FAA of

violating the provisions of § 107.21(a) of the Federal Aviation Regulations, 14 CFR 107.21(a) and § 901(d) of the Federal Aviation Act, as amended, U.S.C.A. 1471(d), and on July 25, 1989, a hearing was held before an FAA ALJ on the FAA's allegations. At the conclusion of the hearing, the ALJ orally imposed a $2,000.00 fine on Mr. Schultz for the alleged violations.

Mr. Schultz appealed the ALJ's decision to the FAA Administrator on August 3, 1989, and on September 9, 1989, the FAA Administrator issued a "Decision and Order" affirming the ALJ's decision.

On April 13, 1990, the United States Court of Appeals, District of Columbia Circuit issued a decision wherein it ruled that the sections of the Federal Administration Act, under which Mr. Schultz had been prosecuted, had been improperly enacted and could not be enforced. Pursuant to the Court of Appeals decision in Air

Transport of America v. Dept. of Transp., 900 F.2d 369 (D.C. Cir 1990), the FAA ceased institution of prosecutions under the referenced sections and held in abeyance all pending prosecutions. In the summer of 1990, pursuant to the decision in Air Transport, the FAA sent a "Notice" to all persons prosecuted under the referenced sections that their cases were being "held in abeyance".

At midnight on July 31, 1990, § 1475(d)(4) of 49 U.S.C.A. lapsed of its own terms, without any savings clause. From midnight July 31, 1990, to August 15, 1990, there was no § 1475(d)(4) of 49 U.S.C, and the 1987 version of § 1475, with all of its extensions, contained no savings clause permitting continued prosecution of cases initiated under the lapsed version of 49 U.S.C.A. § 1475.

Pursuant to the decision in Air Transport, the FAA substantially modified the provisions of the FAA rules for imposing

penalties in civil actions. Those new provisions became effective August 2, 1990. See 14 CFR Part 13, Vol 55, No. 128, Docket No. 25690, Amdt. No. 13-21. On August 15, 1990, Congress enacted a new version of 49 U.S.C § 1475 which permitted the FAA to continue the "demonstration program" under the revised and validly promulgated FAA rules.

The civil prosecution of Mr. Schultz had concluded and the FAA Administrator had issued his "Decision and Order" affirming the ALJ's imposition of a $2,000.00 penalty against Mr. Schultz prior to the time the ruling in Air Transport. Unlike those whose cases that were "held in abeyance" Mr. Schultz was never prosecuted under the new version of the FAA rules, authorized by the August 15, 1990 version of 49 U.S.C.A. § 1475, which empowered the FAA to continue the "demonstration program," in accordance with

the new FAA rules modified in accordance with the decision of the Air Transport ruling. On August 26, 1992, the August 15, 1990 version of 49. U.S.C.A. § 1475 was repealed in total. See Public Law 102-345, § 2(b), 106 Stat. 925.

On November 13, 1992, after 49. U.S.C.A. § 1475 was repealed, the FAA filed the instant action, seeking to collect the sum of $2,000.00 plus interest, penalties and administrative fees from Mr. Schultz pursuant to the July 25, 1989 decision, of the ALJ and pursuant to the November 9, 1989 "Decision and Order", of the FAA Administrator. Mr. Schultz answered the FAA's complaint asserting that: 1) the judgment entered by the ALJ was void under the decision of the Air Transport decision; 2) the judgment of the ALJ was void because the version of 49 U.S.C.A. 1475 under which Mr. Schultz had been prosecuted had lapsed of its own terms prior to the time the FAA initiated this

collection action; 3) the FAA's complaint had not been filed within the appropriate statute of limitations.

The FAA moved for summary judgment on its complaint, asserting that the District Court did not have jurisdiction to hear Mr. Schultz's challenge to the validity of the judgment rendered by the ALJ. Mr. Schultz responded to the FAA's Motion for Summary Judgment and filed a cross Motion for Summary Judgment. The District Court concluded that it did not have jurisdiction to hear Mr. Schultz's challenge to the validity of the FAA's judgment and order and granted the FAA's Motion for Summary Judgment. On appeal, the Court of Appeals affirmed the Judgment of the District Court declaring that the case was controlled by its decision in U.S. V. Mcbride, 788 F.2d 1429, (10th Cir, 1986).

IX

ARGUMENT

This matter should be reviewed by the United States Supreme Court for the following reasons:

1. The District Court's decision and the Court of Appeals affirmation of the District Court's decision holding that the District Court lacked jurisdiction to hear Mr. Schultz's attack on the validity of the Judgment entered by the ALJ is in direct opposition to this Court's holding in Abbott Laboratories v. Gardner, 387 U.S. 136 (1967) declaring that judicial review of final agency action "will not be cut off unless there is persuasive reason to believe that [this] was the intention of Congress," and that such Congressional intent to preclude review had to be demonstrated by "clear and convincing evidence." It is also in opposition to this Court's decision in

Johnson v. Robinson, 415 U.S. 361 (1974).

2. The District Court's decision and the Court of Appeals affirmation of the District Court's decision holding that 49 U.S.C.A. § 1486 applies to persons other than the Secretary of Transportation, as specifically specified in § 1486, is an improper and unlawful drafting of legislation and usurpation of Congressional authority on the part of the federal courts.

3. The District Court's decision and the Court of Appeals affirmation of the District Court's decision holding that the FAA could collect on a Judgment entered by an ALJ acting in accordance with rules that were unconstitutionally enacted and invalidly promulgated, is in direct opposition to the decision of the Court of Appeals for the District of Columbia in Air Transport Assn of America v. Department of Transportation, 900 F.2d 369 (1990).

4. The District Court's decision and

the Court of Appeals affirmation of the District Court's decision holding that the FAA could collect on a Judgment based on a statute that expired of its own terms, without any savings clause, is such a departure of well established law that those decision mandate review by this Court.

5. The District Court's decision and the Court of Appeals affirmation of the District Court's decision holding that the prosecution of Mr. Schultz under rules that were unconstitutionally enacted and invalidly promulgated, is such a departure of well established and fundamental law that those decision mandate review by this Court.

X

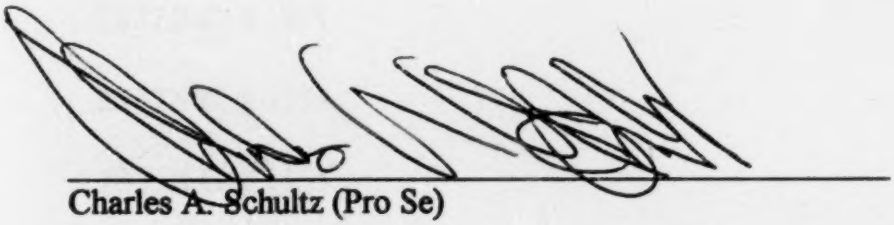
CONCLUSION

The FAA was not entitled to Summary Judgment as a matter of fact or law. The FAA

is attempting to recover moneys from Mr. Schultz based on a void judgment that was obtained pursuant to rules, procedures and processes that were invalidly and unconstitutionally enacted and invalidly unconstitutionally promulgated and based on a statute, which even if valid, expired of its own terms, thus becoming a void judgment. The District Court erred as a matter of law in granting the FAA's Motion for Summary Judgment, and the Court of Appeals for the Tenth Circuit erred as a matter of law in affirming the District Court's judgment. Both the District Court and the Court of Appeals for the Tenth Circuit ignored well-established and controlling law, established by this Court, in rendering their decisions. Therefore, this Court should grant Mr. Schultz's Petition for Certiorari and reverse the District Court's grant of summary judgment in favor of the FAA and remand this case to the district court with instructions

to enter judgment in favor of Mr. Schultz.

Respectfully submitted this 19th day of May 1995.



Charles A. Schultz (Pro Se)

APPENDIX

Decision of Tenth Circuit

Order of Summary Judgment

28 U.S.C. § 1291

28 U.S.C. § 1351

28 U.S.C. § 1355

49 U.S.C.A. § 1471(d)

49 U.S.C.A. § 1475

49 U.S.C.A. § 1486

14 CFR § 13.208

14 CFR § 107.21(a)

Public Law No. 100-233, § 204, 101 Stat. 1520

Public Law 101-236, 103 Stat. 2060

Public Law 101-281, 104 Stat. 164

Public Law 101-370, 104 Stat. 451

Public Law 102-345, § 2(b), 106 Stat. 925

UNITED STATES OF AMERICA

TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
Plaintiff-Appellee,	)	
v.	)	No.94-4047
CHARLES A. SCHULTZ,	)	(D.C. No. 92-CV-974)
Defendant-Appellant.	)	(D. Utah)

ORDER AND JUDGMENT*

Before TACHA, BRORBY and EBEL, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Red. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

This appeal is from an order of the district court granting the United States motion for summary

judgment and denying the pro se defendant's motion for summary judgment. Defendant appeals on the grounds that the district court erred in granting the government's motion for summary judgment because the judgment upon which the complaint was based was void and because the statute under which petitioner was prosecuted was invalid and further on the grounds that the government filed its complaint outside the applicable statute of limitations. We affirm.

---

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavor the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

We review a grant of summary judgment *de novo* applying the same legal standard as that applied by the district court to determine whether any genuine issue of material fact is in dispute and whether the substantive law was correctly applied. Ash Creek Min. Co. V. Lujan, 969 F. 2d 868 (10th Cir. 1992). Defendant was a ticketed passenger on an airline flight when security personnel discovered a loaded revolver in his carry on luggage. The FAA assessed a civil penalty against him for violations of the Federal Aviation Regulations and § 901 (d) of the Federal Aviation Act.

Defendant received a full hearing before an administrative law judge (ALJ) who assessed a civil penalty of $2000. The ALJ's determination was appealed to the administrator of the FAA who affirmed the ALJ's initial decision. The United States filed this action to reduce to judgement the civil penalty against the defendant by the FAA. Defendant's here attempts to collaterally attack the validity of the FAA order. The district court correctly determined that it was without jurisdiction to consider the collateral attack and granted summary judgment in favor of the United States. We agree with the district court that there are no genuine issues of material fact to dispute in this case and that the law is clear that the district court has no jurisdiction to consider a collateral attack on the FAA order. This case is controlled by U.S. v. McBride, 788 F.2d 1429, 1432 (10th Cir. 1986).

AFFIRMED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	
Plaintiff,	:	Civil No. 92-C 974J
vs.	:	ORDER
CHARLES A. SCHULTZ,	:	
Defendant.	:	

The above-entitled matter came before the court on Monday January 3, 1994 at 1:30 p.m. for a hearing on the parties' cross motions for summary judgment. Carlie Christensen, Assistant United States Attorney, appeared for the United States of America. Defendant, Charles A. Schultz appeared on his own behalf.

The court having heard the arguments of counsel and having reviewed the authorities submitted by the parties,

HEREBY ORDERS as follows:

1. The United States' motion for summary judgment is granted and defendant's motion for summary judgment is denied;

2. Judgment shall be entered in favor of the United States and against the defendant, Charles A. Schultz, as follows:

Principal	$2,000.00
Accrued interest to date of judgment	$ 664.99
Administrative Charges	$ 228.00
Cost of Service	$ 40.00
Penalty Charges	$ 180.00
Statutory Surcharge	$ 270.50
TOTAL JUDGMENT	$3,383.49

with interest on the total judgment to accrue as provided by 28 U.S.C. § 1961 from the date of judgment until paid.

DATED this 5th day of January, 1994.

BY THE COURT:

_____

Hon. Bruce S. Jenkins
United States District Court

28 U.S.C.A. § 1291

§ 1291 Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam,, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in section 1292 (c) and (d) and 1295 of this title.

28 U.S.C.A. § 1351

§ 1351 Consuls, vice consuls, and members of a diplomatic mission as defendant

The district courts shall have original jurisdiction, exclusive of the courts of the States, of all civil actions and proceedings against--

(1) consuls or vice consuls of foreign states; or

(2) members f a mission or members of their families (as such terms are defined in section 2 of the Diplomatic Relations Act).

(As amended May 24, 1949, c. 139, § 80(c), 63 State. 101; Sept. 30, 1978, Pub.L. 95-393, § 8(a)(1), 92 Stat. 810.)

28 U.S.C.A. § 1355

§ 1355 Fine, penalty or forfeiture

(a) The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or

enforcement of any fine, penalty, or forfeiture, pecuniary or other wise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

(b)(1) A forfeiture action or proceeding may be brought in--

(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.

(d) Any court with jurisdiction over a forfeiture action pursuant to subsection(b) may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action.

(As amended Oct. 10, 1980, Pub. L. 96-417, Title V, § 507, 94 Stat. 1743; oct. 28, 1992, Pub. L. 102-550, Title XV, V4,6

1521, 106 Stat. 4062.)

U.S.C. § 1471 (d)

§. 1471 (d). Civil penalties; notice and hearing; compromise; liens

Except for law enforcement officers of any municipal or State government or officers or employees of the Federal Government, who are authorized or required within their official capacities to carry arms, or other persons who may be so authorized under regulations issued by the Administrator, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than $10,000 which shall be recoverable in a civil action brought in the name of the United States.

28 U.S.C.A. § 1475

§. 1475. Civil penalty assessment demonstration program

(a) Civil penalty

The Administrator, or his delegate, may assess a civil penalty for a violation arising under this chapter or a rule, regulation, or order issued thereunder, upon written notice and finding of violation by the Administrator.

Administrator.

(b) No reexamination of liability or amount

In the case of a civil penalty assessed by the Administrator in accordance with this section, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

(c) Continuing jurisdiction of district courts

Not withstanding subsection (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator (1) which involves an amount in controversy in excess of $50,000; (2) which is an in rem action or in which an in rem action based on the same violation has been brought; (3) regarding which an aircraft subject to lien has been seized by the United States; and (4) in which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

(d) Limitations

(1) hearing

A civil penalty may be assessed under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of Title 5.

(2) Violations

This section only applies to civil penalties initiated by the Administrator

after December 30, 1987.

(3) Maximum amount

The maximum amount of a civil penalty which may be assessed under this section in any case may not exceed $50,000.

(4) Effective period

The provisions of this section shall only be in effect for the period beginning on December 30, 1987 and ending on August 1, 1992.

28 U.S.C.A. § 1486

§ 1486 Judicial review

(a) Orders subject to review; petition for review. any order affirmative of negative, issued by the Board or Administrator [Secretary of Transportation] under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act [49 USCS Appx § 1461] shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, and within sixty day s after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of the court upon a showing of reasonable grounds for failure to file the petition theretofore.

14 CFR § 13.208

§ 13.208 Complaints.

(a) *Filing.* The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk, or may file a written motion pursuant to § 13.218(f)(2)(i) of this subpart instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing.

The agency attorney should suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney shall personally deliver or mail a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action.

(c) *Contents.* A complaint shall set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual of legal allegation and proposed civil penalty.

(d) *Motion to dismiss allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law

judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with § 13.219(b) of this subpart.

14 CFR § 107.21(a)

§ 107.21(a) Carriage of an explosive, incendiary, or deadly or dangerous weapon.

(a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the individual's person o accessible property--

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area; and

(2) When entering or in a sterile area.

(b) The provisions of this section with respect to firearms do not apply to the following;

(1) Law enforcement officers required to carry a firearm by this part

while on duty on the airport.

(2) Person authorized to carry a firearm in accordance with § 108.11 or § 129.27.

(3) Persons authorized to carry a firearm in a sterile area under an approved security program or a security program issued in accordance with § 129. 25

Public Law No. 100-233, & 204, 101 Stat. 1520

"SEC. 905. CIVIL PENALTY ASSESSMENT DEMONSTRATION PROGRAM.

"(a) CIVIL PENALTY.- The Administrator, or his delegate, may assess a civil penalty for a violation arising under this Act or a rule, regulation, or order issued thereunder, upon written notice and finding of violation by the Administrator.

"(b) NO REEXAMINATION OF LIABILITY OR AMOUNT.- In the case of a civil penalty assessed by the Administrator in accordance with this section, the issue of liability or amount of civil penalty shall not be reexamined in any subsequent suit for collection of such civil penalty.

"(c) CONTINUING JURISDICTION OF DISTRICT COURTS.- Notwithstanding subsection (a) of this section, the United States district courts shall have exclusive jurisdiction of any civil penalty action initiated by the Administrator (1) which involves an amount in controversy in excess of $50,000; (2) which is an in s\rem action or in which an in rem action

based on the same violation has been brought; (3) regarding which an aircraft subject to lien has been seized by the united States; and (4) in which a suit for injunctive relief based on he violation giving rise to the civil penalty has also been brought.

"(d) LIMITATIONS.-

"(1) HEARING.- A civil penalty may be assessed under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, Untied States Code.

"(2) VIOLATIONS.- This section only applies to civil penalties initiated by the Administrator after the date of the enactment of this section.

Public Law 101-236-Dec. 15, 1989

EXTENSION OF PROGRAM,-Section 905(d) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1475(d)(4) is amended by striking "2-year" and inserting "28 month".

Public Law 101-281 [S. 2533); May 4, 1990

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,

Section 1.(a) Section 905(d)(4) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1475(d)(4) is amended by striking "28 month" and inserting in lieu thereof "31 month".

Public Law 101-370 [S. 2533); August 15, 1990

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,

Section 1.(a) Section 905(d)(4) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1475(d)(4) is amended by striking "31 month period beginning on the date of the enactment of this section" and inserting "the period beginning on the date of the enactment of this section and ending on August 1, 1992".

Public Law 103-345 [H.R. 5481); August 26, 1992

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,

(b) REPEAL OF DEMONSTRATION PROGRAM.-Section 905 of such Act (49 U.S.C. App. 1475) is repealed.